

**No. PD-0894-18**  
**IN THE COURT OF CRIMINAL APPEALS**  
**OF TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
4/9/2019  
DEANA WILLIAMSON, CLERK

**VITH LOCH**  
*Appellant*

v.

**THE STATE OF TEXAS**  
*Appellee*

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On Petition for Discretionary Review of Cause No. 01-16-00438-CR  
In the First Court of Appeals, Affirming Judgment in Cause Number 1463146  
From the 209th District Court of Harris County, Texas  
Honorable Michael McSpadden, Presiding

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**APPELLANT'S BRIEF ON THE MERITS**

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## STATEMENT OF THE CASE

On May 13, 2016, Vith Loch pleaded guilty to a charge of murder in a cold case that dated back to 2004 (2 RR at 6). He also pleaded true to an enhancement allegation that he had been convicted in 1990 of burglary of a habitation. A jury was selected for punishment, and after two days of evidence, the jury found him guilty on his plea, found two alleged prior convictions to be true, and assessed punishment at life in prison and a \$10,000 fine. Mr. Loch filed notice of appeal the same day. No motion for new trial was filed.

On July 31, 2018, a unanimous panel of the First Court of Appeals handed down an unpublished opinion that reversed Mr. Loch's conviction. *See Loch v. State*, No. 01-16-00438-CR, 2018 WL 3625190 (Tex. Crim. App – Houston [1<sup>st</sup> Dist.] July 31, 2018) (not designated for publication). No motion for reconsideration or rehearing was filed.

## STATEMENT REGARDING ORAL ARGUMENT

The Court has denied oral argument.

## REPLIES TO ISSUES PRESENTED

**REPLY ONE:** The State improperly puts the burden of proving harm on the appellant when it argues the lack of a statutorily-mandated admonishment before a guilty plea is not harmful if the defendant already is deportable.

(State's Issue 1: Is the failure to admonish about immigration consequences under TEX. CODE CRIM. PROC. ART. 26.13(a) (4) (h) harmful when the defendant was already deportable at the time of his guilty plea due to prior convictions?)



**REPLY TWO:** The State’s extended discussion about whether Mr. Loch knew he was deportable ignores the on-again-off-again history of the United States’ ability to repatriate of citizens of Cambodia, even those with criminal convictions.

(State’s Issue 2: Is the failure to admonish about immigration consequences under TEX. CODE CRIM. PROC. ART. 266.13(a)(4) harmful when the defendant knew he was already deportable at the time of his guilty plea due to prior convictions?)

**REPLY THREE:** The court of appeals correctly considered the record as a whole and held it could not be assured the trial court’s error did not affect Mr. Loch’s substantial rights.

(State’s Issue 3: Was the failure to admonish about immigration consequences under TEX. CODE CRIM. PROC. ART. 26.13(a)(4) harmful when Appellant was already deportable, the evidence of guilt was overwhelming, and he was morally motivated to plead guilty?)

### **STATEMENT OF FACTS**

Vith Loch was born in Cambodia in 1970, the same year the country exploded in a civil war that eventually resulted in a new government led by the brutal Communist leader known as Pol Pot. He then launched a massive, murderous campaign to purge perceived enemies from within – a period of history illustrated in the movie, “The Killing Fields.” It is estimated that more than 1.5 million Cambodians were murdered by Pol Pot’s regime. Thousands fled to refugee camps in Thailand and elsewhere.

Between the years 1975 and 1994, the United States received almost 158,000 Cambodians, most as refugees. Some were immigrants or “humanitarian parolees.” *See* Suchen Chan, *Cambodians in the United States: Refugees, Immigrants, American Ethnic Minority* 1, (Oxford Research Encyclopedia of American History, pub. online September, 2015)

(attached as Appendix A). Their overall number in the United States has remained small: under 280,000, according to the 2010 U.S. Census. *See* <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf> at 16.

The record in this case does not show when or under what immigration designation Mr. Loch arrived in the United States. He may well have arrived here as a young refugee during that 1975-94 time period, like so many other Cambodians. On the other hand, he may have entered illegally, but that is unlikely, given how difficult it has been for Cambodian nationals to make their way to the United States. Regardless of his actual status, the record is silent about it.

Appellant was indicted in 2015 for shooting Soeuth Nay to death in August, 2004 (1 CR at 25). He vanished immediately after Mr. Nay's death, and the State was unable to pursue a case against him until a cold-case investigation opened about a decade later (4 RR at 25).

After Appellant was arrested in April, 2015, he gave a videotaped statement to deputies (SX 6). He admitted pointing a gun at Mr. Nay through his car window, and explained that the gun just went off.

Ultimately, Appellant decided to plead guilty to murder, and to have his punishment decided by a jury. The indictment against him alleged two extraneous offenses, but the State agreed to let him admit to one, burglary of a habitation. At the arraignment, he pleaded guilty to murder and true to the extraneous offense (2 RR at 5).

The arraignment record contains only the briefest of colloquies between the court, Appellant, and his counsel. This is the full colloquy:

THE COURT: Okay. You understand by pleading guilty we are proceeding upon the jury finding out that you're pleading guilty to the offense. I'll talk to them tomorrow about that and also you plead true on the one enhancement paragraph, which makes the punishment between 15 years and 99 years or life. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. For the record, Sean, do you want to put on the record that this is Mr. Loch's decision and his decision alone in pleading guilty?

MR. PAYNE: That is correct, Your Honor.

THE COURT: Go right ahead.

MR. PAYNE: Mr. Loch, I've been working this case for almost a year; is that correct?

THE DEFENDANT: Yes.

MR. PAYNE: And we have, during that time frame, we have discussed your case at length; is that correct?

THE DEFENDANT: Yes, sir.

MR. PAYNE: And I have discussed all potential defensive theories and strategies in this case?

THE DEFENDANT: Yes, sir.

MR. PAYNE: You also understand that I have filed several motions, mainly being a Motion to Suppress evidence, namely, your statement. Do you understand that?

THE DEFENDANT: Yes, sir.

MR. PAYNE: And you understand that I've indicated that I thought that it was a trial strategy to pursue?

THE DEFENDANT: Yes.

MR. PAYNE: But you have instead decided to go ahead with the plea of guilty in this cause, in lieu of going that route, is that correct?

THE DEFENDANT: Yes.

MR. PAYNE: It is your desire to not only plead guilty but to have the jury assess punishment in this case?

THE DEFENDANT: Yes, sir.

MR. PAYNE: Nothing further, Your Honor.

THE COURT: Mr. Loch, on your plea of guilty in the arraignment right now, you are going to remain on the same bond until the jury finds you guilty and that will be sometime this week. You may remain on bond. Just be back here, be back here at 9:00 o'clock, just to make sure you're here and we will pick a jury tomorrow afternoon. Okay.

Any questions?

MR. ALLARD: No, Your Honor.

THE COURT: Okay.

MR. PAYNE: No, Your Honor.

THE COURT: Mr. Loch, see you tomorrow. Thank you.

(2 RR at 5). The next day, neither the trial court nor defense counsel gave any additional admonishments, or questioned Appellant further about his plea (3 RR at 4). Nor did the court or counsel do more the following day, when Appellant was arraigned in front of the jury (4 RR at 6).

## SUMMARY OF THE ARGUMENT

While it may have been true that, as the State argues, “Appellant was removable as a matter of law before his guilty plea,” he was not necessarily removable as a matter of **fact**, due to the volatility of relations between the United States and his home country of Cambodia. Further, the record is silent about whether he actually **knew** he was removable, which is the question that must be answered affirmatively for the State to prevail when, as here, the record lacks any indication that he was properly admonished under TEX. CODE CRIM. PRO. ART. 26.13(a).

The court of appeals considered the entire record and found it could not have a fair assurance Mr. Loch’s decision would not have changed if the court had admonished him as required by Article 26.13. This was the only result the court could reach on a silent record.

## ARGUMENT

**REPLY ONE: The State improperly puts the burden of proving harm on the appellant when it argues the lack of a statutorily-mandated admonishment before a guilty plea is not harmful if the defendant already is deportable.**

(State’s Issue 1: Is the failure to admonish about immigration consequences under TEX. CODE CRIM. PROC. ART. 26.13(a)(4) h) harmful when the defendant was already deportable at the time of his guilty plea due to prior convictions?)

The State’s argument can be distilled as follows: Appellant was already deportable, so the trial court’s failure to admonish him could not have harmed him.

This creates a *per se* harmlessness rule that is contrary to the requirements of TEX. R. APP. P. 44.2 and this Court's well-established precedents.

Further, the argument does not account for the varied and complex reasons a criminal defendant decides to enter a guilty plea – reasons which are, to a greater or lesser degree in a particular case, both rational and emotional. Simply put, it cannot be assumed from the record in this case that Mr. Loch necessarily would have chosen to plead guilty even if the trial court had admonished him that he faced potential immigration consequences in this case, as required by TEX. CODE CRIM. PRO. ART. 26.13 (a).

**A. The correct standard of review applies the harm analysis for non-constitutional error.**

Because a claim of admonishment error is predicated upon a statutory violation, the standard for determining harm that pertains to claims of non-constitutional error governs – TEX. R. APP. P. 44.2. *See Davison v. State*, 405 S.W.3d 682, 687-88 (Tex. Crim. App. 2013) (reversing for failure to admonish on range of punishment). When applying Rule 44.2(b) to the failure to give an admonishment, the appellate court must determine whether, “considering the record as a whole, [there is] fair assurance that the defendant’s decision to plead guilty would not have changed had the court admonished him[.]” *Anderson v. State*, 182 S.W.3d 914, 919 (Tex. Crim. App. 2006). Neither party bears the burden of demonstrating harm on appeal. *See Johnson v. State*, 43 S.W.3d 1 (Tex. Crim. App. 2001).

This Court has set out three inquiries that “can be useful” for an appellate court when deciding whether there is a fair assurance that a defendant’s substantial rights were not affected: 1) whether the appellant knew the consequences of his plea; 2) the strength of the evidence of his guilt; and 3) his citizenship and immigration status. *See Fateye v. State*, 227 S.W.3d 714, 716 (Tex. Crim. App. 2007).

**B. “[J]ust as not everyone who is arrestable actually gets arrested, being deportable is not equivalent to being deported.”<sup>1</sup>**

This Court has already held that mere fact of a prior conviction does not give rise to any reasonable inference that a defendant would have pleaded guilty even if the trial court had properly admonished him. *See VanNortrick v. State*, 227 S.W.3d 706, 713-14 (Tex. Crim. App. 2007). In *VanNortrick*, the Court observed that even if a defendant were fully aware of the consequences of a prior conviction, he reasonably could believe that, having not been deported so far, he likely never would be deported for a new conviction. He also reasonably could believe that a conviction in his present case presented a renewed risk to his immigration status. This might make him more likely, rather than less likely, to insist on his right to a jury trial rather than plead guilty. *Id.* In any event, the Court concluded, without more in the record than a pen packet showing a prior conviction, a reviewing court could do no more than speculate about whether the appellant would have changed his mind about his guilty plea if he had been

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<sup>1</sup> *VanNortrick v. State* at 711.

admonished. *Id.*

Similarly, even if Mr. Loch had known he already was deportable – a matter about which the record is silent – he also knew that he never had been deported. Without a proper admonishment, he had no reason to believe a guilty plea in this case might affect his immigration status, when his prior pleas had not.

Further, the record offers no evidence from which a court could infer that Mr. Loch had any special knowledge about immigration law and policy, which might make him independently aware of the consequences of a guilty plea in a murder case such as his. Even the State, despite its well-researched and extended argument concerning removability laws, apparently is unaware of the complexity of the United States' efforts to apply those laws to Cambodian nationals such as Mr. Loch. *See* Issue Two, below.

The fact that Mr. Loch may have been removable or deportable prior to his guilty plea, then, is not a factor in the harm analysis. As the Court pointed out in *VanNortrick*, “There are simply too many possible scenarios ... Drawing any sort of reasonable inference from the record before us is no more than mere supposition, which cannot support what the State suggests.” *VanNortrick*, 227 S.W.3d at 711.

The State is suggesting, in effect, that the Court adopt a *per se* rule: if a defendant already is deportable before he enters a guilty plea, a failure to admonish him about potential immigration consequences is harmless. This effectively would exclude an entire class of defendants from the protection of TEX. CODE CRIM. PRO. ART. 26.13(a)(4).



Further, it would carve out an exception where the statute's plain language has not. As it stands, Article 26.13 applies to all defendants who choose to plead guilty or no contest, and the harm analysis for a court's failure to comply also applies to all. The Legislature might have crafted such an exception (though it hard to envision one that would pass muster under the U.S. and Texas Constitutions' equal protection clauses), but it did not. The law, as it stands, requires trial courts to give all defendants the same admonishment, and requires reviewing court to apply the same harm analysis to all defendants.

The statute's plain language focuses **only** on the defendant's lack of U.S. citizenship: "[T]he court shall admonish the defendant of ... the fact that if the defendant is not a citizen of the United States, a plea of guilty ... for the offense charged may result in [deportation, exclusion, or denial of naturalization]." It matters not whether a defendant was previously removable, for whatever reason.

A reviewing court's harm analysis, then, does not turn on his prior deportability, but on his lack of citizenship. For this reason, the Court has held that the failure to admonish a U.S. citizen about immigration consequences is **not** harmful error. *See Cain v. State*, 947 S.W.2d 262 (Tex. Crim. App. 1997).

Appellant urges this Court to overrule the State's first issue. Harm must be analyzed on a case-by-case basis, not established by judicial fiat.

**REPLY TWO: The State’s extended discussion about whether Mr. Loch knew he was deportable ignores the on-again-off-again history of the United States’ ability to repatriate of citizens of Cambodia, even those with criminal convictions.**

(State’s Issue 2: Is the failure to admonish about immigration consequences under TEX. CODE CRIM. PROC. ART. 266.13(a)(4) harmful when the defendant knew he was already deportable at the time of his guilty plea due to prior convictions?)

#### **A. Standard of Review**

The standard of review for statutory errors in admonishment cases further requires a reviewing court to look at the record as a whole “to determine whether **the defendant** was aware of the ... information upon which he should have been admonished ... prior to the time that the trial court accepted his plea. A record that is completely silent with respect to whether a defendant was actually aware of the [information] supports the inference that he was *not* in fact so aware for purposes of the Rule 44.2(b) harm analysis.” *Davison*, 405 S.W. 3d at 688. (reversing for failure to admonish on range of punishment).

As discussed in Issue One, the Court has identified three factors that are helpful in the review of whether a failure to admonish was harmful: 1) whether the appellant knew the consequences of his plea; 2) the strength of the evidence of his guilt; and 3) his citizenship and immigration status. *See Fateye*, 227 S.W.3d at 716. The first of these questions forms the basis for the State’s second issue. It is the only one of the three issues that cannot be answered by the record in this case.

Regarding the second question – the strength of the evidence of the defendant’s guilt – the record reflects that the State had strong evidence of Mr. Loch’s guilt, including his own confession. As to the third question – the defendant’s citizenship and immigration status – it is undisputed that Mr. Loch is a citizen of Cambodia, not the United States.

**B. The record is silent about whether Mr. Loch was aware that a conviction in this case might result in his deportation, exclusion from admission, or denial of naturalization.**

The State devotes 22 pages of its argument to an extended discussion of general immigration law. Nowhere in its argument, however, does the State take into account the fact that Cambodian nationals could **not** be removed from the United States, regardless of the reason, until 2002. Before then, Cambodia refused to accept its citizens whom the U.S. sought to repatriate. *See, e.g., Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1115 (9th Cir. 2001) (discussing repatriation in 1997): “Although the INS offered evidence that the State Department has submitted a proposal for a repatriation agreement to the Cambodian government, both sides agree that the United States has no functioning repatriation agreement with that country, that **the Cambodian government does not [as of 2001] accept the return of its nationals from the United States**, and that it has not announced a willingness to enter into an agreement to do so in the foreseeable future, (or indeed at any time” (emphasis added).

This stand-off existed until 2002, when the two countries entered into a memorandum of understanding to facilitate the return of deportable Cambodian

nationals. By the end of 2002, 127 persons had been repatriated from the United States by year's end. *See* U.S. DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2004: CAMBODIA (Feb. 2005) (available at 2005 WL 1005829 (USDS)).

Even with the memorandum of understanding, however, the repatriation process for Cambodian nationals continues to be anything but routine or automatic. As a federal district court in the Western District of Washington described the process as follows:

The [memorandum of understanding] sets out a procedure through which Cambodian nationals can be, and have been, repatriated. In particular, the agreement authorizes the United States to make a repatriation request to a “Central Authority” designated by the Cambodia government. The Central Authority may choose to interview potential deportees, but it is generally supposed to respond to a repatriation request in writing within thirty days of the request. If a repatriation request is denied, the request will be reviewed at the next regularly scheduled bi-annual meeting of a joint Cambodia/United States commission established under the agreement.

*Lun v. U.S. INS*, No. CO2-0937L, 2002 WL 34202292 (Dec. 4, 2002) (unpublished). Cambodia's willingness to grant repatriation requests continues to vary, depending on U.S. threats of sanctions, among other issues.

**C. The 1990 and 1996 Texas convictions did make Mr. Loch subject to any immigration consequences.**

There would have been no reason, in 1990 or 1996, for a Cambodian such as Mr. Loch to be aware of the immigration consequences of any criminal conviction, or even that such consequences existed. As discussed above, the United States could not repatriate Cambodian nationals before 2002, so Mr. Loch would not have experienced

any immigration consequences as a result of either case. But even if potential immigration consequences for Mr. Loch had existed in 1990 or 1996, that is no evidence that he knew a guilty plea might have immigration consequences for the offense in **this** case.

Texas law has required trial courts to admonish defendants about potential immigration consequences of their guilty pleas since at least 1965. *See* Acts 1965, 59<sup>th</sup> Leg. Ch. 722 § 1, eff. Jan. 1 1966. However, the judgment and sentence forms that are State's Exhibits 26, 28, and 29 do not show whether Mr. Loch received the required admonishments in any prior case.

Trial courts do not always follow the requirements of Article 26.13, as this case demonstrates. For this reason, the fact that Mr. Loch previously pleaded guilty is no evidence that he received admonishments in accordance with Article 26.13. It also is no evidence that he was aware of potential immigration consequences in this case.

**D. The 2005 Florida convictions did not put Mr. Loch on notice that he was subject to any immigration consequences.**

State's Exhibit 27, Mr. Loch's pen packet from Florida prison authorities, refers to an ICE detainer. However, it does not show that Mr. Loch was aware that the detainer existed. Even if he had somehow known, that fact would not lead to a conclusion that he would have known or understood that he might face any immigration consequences from this case, which is what Article 26.13 requires.

A detainer is not addressed to the offender. Rather:

A detainer is a request that the receiving law enforcement agency both notify DHS as early as practicable, at least 48 hours, if possible, before a removable alien is released from criminal custody, and also maintain custody of the alien for a period not to exceed 48 hours beyond the time the alien would otherwise have been released to allow DHS to assume custody for removal purposes.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, FISCAL YEAR 2018 ICE

ENFORCEMENT AND REMOVAL OPERATIONS REPORT p. 9, available at

<https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>. There is no reason for an incarcerated defendant – including Mr. Loch – to know that ICE has issued a detainer for him.

**E. It is patently untrue that “according to Appellant’s stipulations when pleading guilty, he was aware that an ICE detainer had been issued when he was a prison in Florida,” as the State claims.**

Appellant’s stipulation regarding his prior convictions does not mention ICE or detainers anywhere (SX 21). Likewise, the documents cited by the State in support of its claim – 5 RR 165-66; 7 RR State’s Exhibit 27 and 7 – say **nothing** about detainers. The record simply does not support the State’s assertion.

Considering the record as a whole, there was absolutely no evidence that Mr. Loch was aware of the ICE detainer at any time. The State’s categorical claim that he admitted this crucial fact in his stipulation is untrue. The record provides neither evidence that Mr. Loch had actual knowledge, nor a factual basis for an inference that he must have known about it.

**F. Creating a presumption that a defendant was aware of the immigration consequences of a guilty plea would place the burden of knowing the law on the accused, a burden greater than that imposed on his attorney.**

In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the Supreme Court held that defense counsel is ineffective if counsel fails to inform his client about the potential immigration consequences of a guilty plea. *Id.* at 374-5. The Court’s recognition of this duty rested, to a large degree, on the fact that the immigration consequences in Padilla’s particular case were “succinct, clear, and explicit in defining the removal consequence . . .” *Id.* at 368.

In Mr. Loch’s case, the law of removability in general may have been clear (i.e., a noncitizen convicted of murder is removable), but the actual consequences of a conviction for murder in his case were not. The ever-shifting relationship between the United States and Cambodia, discussed above, made it difficult – to know whether a plea of guilty would actually lead to removal at any particular point in time. Mr. Loch’s case is more difficult than many, given that potential for immigration consequences hinged not only on statutory law and government regulations, but also on the vagaries of geopolitics. It is a prime example of the folly of the State’s presumption.

Even criminal defense counsel would not be held to a standard that required him to know the current state of repatriation between the U.S. and any given country. Rather, counsel might be required to suggest his client seek advice from immigration counsel. *Id.* at 369 (“Immigration law can be complex, and it is a legal specialty of its own.”).

The admonishment from the trial court, as required by Article 26.13, has the same effect: puts the defendant on notice that there **may** be immigration consequences of a plea, leaving it to the defendant and counsel to find out whether there are or not. *Id.* The trial court's error in failing to give the admonishment to Mr. Loch, who had no reason to know that a guilty plea might result in his removal from the United States, deprived him of his substantial right to make an **informed** decision about whether to plead and waive his right to a jury trial.

**G. The court of appeals correctly concluded there was no evidence to support an inference that Mr. Loch actually was aware he might face removal or other consequences if he pleaded guilty.**

After reviewing the entire record, the court of appeals said: "The State argues that appellant must have been aware of the immigration consequences of his guilty plea ... However, there is *no evidence in the record* that establishes *that appellant actually received an admonishment* in any of those cases *or was otherwise made aware* of the immigration consequences of his plea. *Loch*, mem. op. at 7. This is the only conclusion that can be drawn from the record in Mr. Loch's case.

**REPLY THREE: The court of appeals correctly considered the record as a whole and held it could not be assured the trial court's error did not affect Mr. Loch's substantial rights.**

(State's Issue 3: Was the failure to admonish about immigration consequences under TEX. CODE CRIM. PROC. ART. 26.13(a)(4) harmful when Appellant was already deportable, the evidence of guilt was overwhelming, and he was morally motivated to plead guilty?)



**A. The court of appeals considered the record as a whole.**

When the court of appeals conducted its harm analysis, it considered each of the three issues suggested by this Court in *Davison*, 405 S.W.3d at 687-88:

**(1) whether appellant knew the consequences of his plea:**

As discussed in Issue Two above, even if the State is correct Mr. Loch was already deportable, the harm analysis hinges on his own knowledge or awareness, not on immigration law in the abstract.

The lower court rejected the State's argument that it could infer Mr. Loch must have been aware of immigration consequences because he had pleaded guilty in other cases. It found that there was no evidence in the record that Mr. Loch actually received admonishments in those cases. *Loch*, mem. op. at 7. The court concluded by echoing *VanNortrick*: “[d]rawing any sort of reasonable inference from the record before us is no more than mere supposition, which cannot support what the State suggests.” *Loch*, mem. op. at 8.

**(2) the strength of the evidence of his guilt:**

As the court of appeals pointed out, this Court has already said that strength or weakness of the evidence makes “little difference” to the harm analysis when the appellate court cannot infer the defendant knew about the potential immigration consequences of his plea. *Loch*, mem. op. at 8. In Mr. Loch's case, as in other cases where the defendant was not admonished, the reviewing court could not be certain that, even if the evidence of guilt against him were strong, he necessarily would have decided

to guarantee himself a conviction by pleading guilty. Instead, he might have chosen to take his chances at trial, which would give him his only chance to possibly avoid removal or other adverse immigration consequences. *Id.*

**(3) his citizenship and immigration status:**

It is undisputed in this case that Mr. Loch is a citizen of Cambodia, not the United States. The record is silent about his immigration status.

According to *VanNortrick*, when the record shows a defendant is not a U.S. citizen, the failure to admonish him of potential immigration consequences is harmful. *VanNortrick*, 227 S.W.3d at 713. Even if the Court decided to follow the State's lead and reject its own precedent, however, the silent record still supports the court of appeals' finding on the issue of harm, for the reasons discussed above.

A further analysis of the record as a whole shows this was not the trial court's only error in admonishing Mr. Loch. In fact, the court complete failed to comply with all but one of the requirements of Article 26.13(a) – the requirement that the trial court inform him of the range of punishment for his offense. The omission of the other statutory admonishments demonstrates further harm to Mr. Loch, since there was no evidence in the record that he was aware of any of the other matters listed in Article 26.13(a).

**B. The State's discussion of *Guerrero* and *Cain* does not strengthen its argument.**

1. *Guerrero v. State*

The record includes no evidence that Mr. Loch was undocumented. As discussed above, he may well have entered the United States as a refugee.

In contrast, the defendant in *State v. Guerrero* was an undocumented noncitizen. *See State v. Guerrero*, 400 S.W.3d 576, 588-89 (Tex. Crim. App. 2013). The Court distinguished the *Guerrero* case from *Padilla v. Kentucky* for this reason. Because the defendant in *Guerrero* was subject to immediate deportation, the prospect of removal therefore could not reasonably have affected his decision to waive counsel and plead guilty, the Court held. *Id.*

While it may be reasonable to presume that an *undocumented* person knows he may be removable from the United States, that presumption is not reasonable when applied to a *refugee*, who ordinarily would have no reason to be aware that a particular criminal conviction might make him subject to removal. With no evidence that Mr. Loch was undocumented, *Guerrero*'s reasoning does not apply to his case.

## 2. *Cain v. State*

The State's claim that *Cain v. State* applies to this case also does withstand scrutiny. According to the State, Mr. Loch's status as a non-citizen equivalent to the *Cain* defendant's status as a U.S. citizen. In *Cain*, this Court noted that because the defendant was a citizen, he *could not* be removed for a criminal conviction. This made the trial court's failure to admonish him about potential immigration consequences under Article 26.13 harmless, the Court ruled. *Cain v. State*, 947 S.W.3d 262 (Tex. Crim. App. 1997).

Unlike the *Cain* defendant, Mr. Loch needed to know the potential impact of immigration law on him if he pleaded guilty. At minimum, he needed to be able to make an informed decision about whether to inquire further about potential immigration consequences. In his situation, unlike in *Cain*, the lack of admonishment **was** harmful, because it kept him from making a knowing and voluntary decision to waive his right to a jury trial. *See Carranza v. State*, 980 S.W.2d 653, 658 (Tex. Crim. App. 1998).

**C. Mr. Loch's strategy to focus on punishment was based on the limited information he had. It does not create an inference that he would have made the same strategic choice if he had been fully informed about the potential immigration consequences of a guilty plea.**

The fact that Mr. Loch chose a particular strategy does not mean that he would have chosen the same strategy if he had more variables to consider. He made what he believed to be the best decision based on the information available to him. The whole problem with the trial court's error is it denied Mr. Loch a piece of important information for him to consider or to disregard in the process of deciding how to proceed. Though the record shows his attorney explained that he thought the case was defensible 2 RR at 7-8, it does not show that the attorney or anyone else warned Mr. Loch about immigration consequences.

There is no way to know at what point a particular defendant will change his mind about trial vs. plea. It is possible, as the State argues, that the additional information in the admonishments would not have mattered to Mr. Loch. It is just as possible, though, that the admonition would have mattered, tipping the scale in favor

of a decision to proceed with a trial on guilt/innocence. This record simply does not provide “fair assurance that appellant’s decision to plead guilty would not have changed had the trial court properly admonished him of the potential immigration consequences of his guilty plea.” *Loch*, mem op. at 6, citing *VanNortrick*, 227 S.W.3d at 709.

### **CONCLUSION**

As the Supreme Court pointed out in *Padilla*, “The severity of deportation – ‘the equivalent of banishment or exile,’ – only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.” *Padilla* at 373-74, citing *Delgado v. Carmichael*, 332 U.S. 388, 390–391 (1947). The same concern also underscores how critical it is for a trial court to comply with the admonishment rule in Article 26.13.

Further, those admonishments are critical for other reasons noted by the court of appeals: they “ensure that trial courts enter and accept only constitutionally valid pleas and ... assist trial courts in making the determination that a defendant’s relinquishment of rights is made knowingly and voluntarily.” *Loch*, mem. op. at 5. On this record, the court of appeals correctly reversed Mr. Loch’s conviction.

### **PRAYER**

Appellant respectfully requests this Court to overrule each of the State’s issues, and affirm the judgment of the court of appeals.

**ALEXANDER BUNIN**  
Chief Public Defender  
Harris County Texas

*/s/ Cheri Duncan*

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**CERTIFICATE OF SERVICE**

I certify that a copy of this reply was served electronically on the Harris County District Attorney's Office and the State Prosecuting Attorney on April 1, 2019.

*/s/ Cheri Duncan*

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CHERI DUNCAN

**CERTIFICATE OF COMPLIANCE**

I certify that this reply complies with Rule 9.2, TEX. R. APP. PROC. It was prepared on a computer using 14-point Garamond type. Counted according to the rule, it contains 5.457 words.

*/s/ Cheri Duncan*

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CHERI DUNCAN

## **APPENDIX A**

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## Cambodians in the United States: Refugees, Immigrants, American Ethnic Minority

Sucheng Chan

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### Summary and Keywords

Cambodians entered the United States as refugees after a group of Cambodian Communists named Khmer Rouge, led by the French-educated Pol Pot, won a civil war that had raged from March 1970 to April 1975 and proceeded to rule the country with extraordinary brutality. In power from April 17, 1975, to January 7, 1979, they destroyed all the major institutions in the country. An estimated 1.7 million people out of an estimated total population of 7.9 million died from executions, hunger, disease, injuries, coerced labor, and exposure to the elements. The refuge-seekers came in three waves: (1) just before the Khmer Rouge takeover, (2) during the regime's existence, and (3) after the regime was overthrown. Some former Khmer Rouge personnel, who had escaped to Vietnam because they opposed Pol Pot's extremist ideology and savage practices, returned in late December 1978, accompanied by 120,000 Vietnamese troops, to topple the government of their former comrades. A second civil war then erupted along the Thai-Cambodian border pitting the rump Khmer Rouge

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opposed the new Cambodian government that was supported and controlled by Vietnam. When hundreds of thousands of Cambodians, along with Laotians and Vietnamese, showed up at the Thai-Cambodian border to seek refuge in Thailand, the Thai government and military did not welcome them. Thailand treated the Cambodians especially harshly for reasons related to the Thai officials' concerns about the internal security of their country.

Almost 158,000 Cambodians gained entry into the United States between 1975 and 1994, mainly as refugees but with a smaller number as immigrants and "humanitarian parolees." Cambodian ethnic communities sprang up on American soil, many of them in locations chosen by the U.S. Office of Refugee Resettlement. By the time the 1990 U.S. census was taken, Cambodians could be found in all fifty states. The refugees encountered enormous difficulties adapting to life in the United States. Only about 5 percent of them, mostly educated people from the first wave of refugees who came in 1975 and who, therefore, did not experience the atrocities of the Khmer Rouge era, managed to find white-collar jobs, often serving as intermediaries between

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their compatriots and the larger American society. About 40 to 50 percent of the Cambodian newcomers who arrived in the second and third waves found employment in blue-collar occupations. The rest of the population has relied on welfare and other forms of public assistance. A significant portion of this last group is composed of households headed by women whose fathers, husbands, or sons the Khmer Rouge had killed. It is they who have had to struggle the hardest to keep themselves and their children alive. Many women had to learn to become the main bread winners in their families even though they had never engaged in wage labor in their homeland. Large numbers of refugees have suffered from post-traumatic stress disorder but have received very little help to deal with the symptoms. Some children, lacking role models, have not done well academically and dropped out of school. Others have joined gangs. Despite myriad difficulties, Cambodians in the United States are determined to resuscitate their social institutions and culture that the Khmer Rouge had tried to destroy during their reign of terror. By reviving Cambodian classical dance, music, and other performing and visual arts, and by rebuilding institutions, particularly Buddhist temples, they are trying valiantly to transcend the tragedies that befell them in order to survive as a people and a culture.

Keywords: [Cambodians](#), [Khmer Rouge](#), [refugees](#), [Thai refugee camps](#), [resettlement](#), [ethnic communities](#), [cultural revival](#)

The United States Congress passed the 1980 Refugee Act that adopted the United Nations' definition of "refugee" as a person who is outside of his or her country and is unable or unwilling to return to it "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." That act also enabled Congress to become an equal partner with the president in formulating U.S. refugee policy and how it should be implemented.<sup>1</sup> Before 1980, the executive branch of the U.S. government, under the "parole power" of the attorney general, had admitted groups of people as refugees that reflected two concerns: (1) the anti-Communist ideology that underlay U.S. foreign policy during the decades when the Cold War dominated international relations, and (2) U.S. immigration policy that became increasingly restrictive during the early decades of the 20th century and was not liberalized until the passage of the 1965 Immigration Act. Thus, there existed contradictory considerations with regard to which groups of people could be admitted as refugees outside of the regular immigration quotas. On the one hand, refugees were seen as people who "voted with their feet" as they escaped from countries ruled by oppressive Communist regimes; hence, such "freedom fighters" should be welcomed into the United States. On the other hand, as shown by the vicissitudes in the history of U.S. immigration policy, the United States should not admit too many foreigners because their arrival might affect negatively American society or, worse, pose a security threat to the nation.

From the late 1940s to the late 1960s, European refugees from Communism included three kinds of persons: (1) "displaced persons," some of whom were Jewish survivors of the Holocaust, who refused to be repatriated to their countries of origin that were now under Soviet Communist domination, (2) Hungarians, and (3) Czechs. The latter two groups had revolted against the Soviet Union that had turned their countries into political "satellites" after the end of the Second World War and that used military force to put down the Hungarian uprising in 1956 and the one in Czechoslovakia, known as the "Prague Spring," in 1968. In the 1950s, thousands of Chinese were admitted after a Communist government came to power in mainland China in 1949. In the early 1960s, Cubans were admitted as refugees almost without question after the 1959 Cuban revolution turned Cuba into a Communist country. Only in the 1990s was an annual quota established to limit the number of Cubans who could be admitted. During those same decades, Jews from the Soviet Union similarly received special consideration as refugees. From the mid-1970s to the end of the 20th century, people from Vietnam, Laos, and Cambodia entered as refugees when Communist governments came to power in all three countries in 1975—on April 17 in Cambodia, April 30 in South Vietnam, and December 2 in Laos. In contrast, only tiny numbers of refuge-seekers from oppressive non-Communist regimes, such as Haitians, Salvadorans, Guatemalans, and Hondurans, have been granted entry into the United States.<sup>2</sup> This remained the case even after the enactment of the 1980 Refugee Act that supposedly removed the anti-Communist imperative from U. S. refugee policy. Refuge-seekers from other countries, including people from Iraq and Afghanistan where the United States has fought long wars, have also entered but in very small numbers compared to the (combined) millions of Cubans, Soviet Jews, and Indochinese (the last group includes Vietnamese, Sino-Vietnamese, Cambodians, lowland Lao, Hmong, Lu Mien, Tai Dam, and Cham)—all of them refugees from Communism.

## Historical Background

The story of Cambodian refugees in the United States cannot be fully understood without some knowledge of that country's tragic history. Cambodia, a small country in mainland Southeast Asia, was once a much larger kingdom named Angkor (802–1431). The Khmer are the major ethnic group in Cambodia; the language they speak is also called Khmer and it belongs to the Mon-Khmer family of languages. Khmer culture was strongly influenced by Indian civilization, especially by Buddhism, a religion that originated in India. The Angkorian kings built magnificent monumental temples, the ruins of which still stand and attract tourists from around the world. Angkor's neighbor to the west, Siam (the old name for Thailand), invaded and sacked Angkor Thom, the capital, in 1431 and captured four of Angkor's northwestern provinces in the following century. By 1603, Cambodia had become a vassal state of Siam. Cambodia's neighbor to the east, Vietnam, laid claim to the Mekong Delta that Angkor had ruled by sending successive waves of Vietnamese to settle there. By the mid-19th century, Cambodia had become a vassal state of both Siam and Vietnam. This history of being victimized by aggressive neighbors engendered a persistent suspicion among Cambodians—both the elite and the common people—of Thai and Vietnamese designs to conquer and colonize Cambodia. Such worries surfaced again during the 1970s as told below.

France was the next country to subjugate Cambodia by making it into a French protectorate in 1863. (The French had also colonized Cochinchina, the southernmost part of Vietnam, in 1862; Annam and Tonkin, the central and northern sections of Vietnam, in 1883, and Laos in 1889, amalgamating all of them into an entity called French Indochina.) While allowing the Cambodian king to remain on the throne, the French now controlled important aspects of Cambodian society, including succession to the throne. In 1940, the French put a nineteen-year-old prince, Norodom Sihanouk, on the throne because they thought he could be more easily manipulated than the son of the late king. From December 1941 through the spring of 1942, in addition to bombing Pearl Harbor, Japan invaded and occupied Burma, the Philippines, the Malay Peninsula, Singapore, and Indonesia when those lands were still under European colonial rule. Thailand, which was never colonized, managed to remain independent by accommodating Japanese demands. The Japanese also did not have to use military force in French Indochina to gain control over that territory (and therefore did not formally colonize Vietnam, Laos, and Cambodia) because the Vichy government in France (the Nazi collaborationist government established as Germany conquered France) signed an agreement with Japan to let Japan station and move troops through its colonies in Indochina in exchange for allowing French colonial administrators to remain in their posts. In March 1945, when it looked likely that Japan might lose the war, the Japanese encouraged the local elite in each Southeast Asian colony to declare their independence. King Sihanouk did so, but soon the French returned to successfully re-colonize Indochina.

No one anticipated that Sihanouk would become a skillful politician who not only successfully juggled domestic factions vying for power but also played the United States, the Soviet Union, and the People's Republic of China against one another during the Cold War. While the First Indochina War (1946–1954)—an anticolonial war that the Vietnamese fought against the French—was going on, Sihanouk in 1953 embarked on a world tour to promote independence for Cambodia. With its troops bogged down in Vietnam, France in 1953 granted independence to both Cambodia and Laos—two colonies it had always considered to be less important than Vietnam. But the independence was incomplete because France retained the right to control the economies and foreign relations of the two countries. However, the 1954 Geneva Agreements that settled the First Indochina War did affirm Cambodia's full independence and territorial integrity.

King Sihanouk abdicated the throne in 1955 and installed his father as the ceremonial head of state so that he himself could engage more actively in politics. For the next decade and a half, he tried to balance all forces, internal and external, that were competing to dominate Cambodia. He kept Cambodia neutral during the Cold War. He broke off diplomatic relations with the United States in 1967, maintained peaceful relations with China that he predicted would one day become the dominant power in Asia, but dealt harshly with the Communists within his own country.<sup>3</sup>

The Cambodian Communist movement had begun as a small "section" within the Indochinese Communist Party that the Vietnamese revolutionary leader Ho Chi Minh had founded in 1930. That party dissolved itself during World War II but re-emerged in 1951 under a different name—the Vietnamese Workers' Party—which helped to establish a Khmer People's Revolutionary Party in Cambodia and a Laotian People's Revolutionary Party in Laos. Though numbering only about two thousand at the time, the Cambodian Communists were divided into three factions, the most radical of which consisted of several dozen persons who coalesced around the French-educated Saloth Sar, whose nom de guerre, Pol Pot, would become the moniker by which

he would be known notoriously around the world. Sihanouk dubbed this group the “Khmer Rouge,” meaning Red Khmer in French.<sup>4</sup> In March 1970, when Sihanouk was traveling abroad, his prime minister, General Lon Nol, and the deputy prime minister, Sirik Matak, one of Sihanouk’s cousins, deposed him and changed the name of the country from the Kingdom of Cambodia to the Khmer Republic, which quickly re-established diplomatic relations with the United States. The United States provided the Lon Nol government with \$1.18 billion in military aid and \$503 million in civilian aid during the five years he ruled the country.<sup>5</sup> Even though Sihanouk had persecuted the Communists while he was in power, he now joined forces with the Khmer Rouge to fight against the Lon Nol regime.

## The Khmer Rouge Regime, 1975–1979

When the civil war began in 1970, the Khmer Rouge had about 4,000 regular troops, somewhere between 4,000 and 15,000 guerrillas, and controlled one-sixth of the territory of Cambodia. By 1975, their strength had grown to 60,000 main-force troops and some 200,000 guerrillas. They won the war in 1975 when their black-clad troops marched into Phnom Penh, the country’s capital, on April 17. Their rapid advance was made possible by several factors: (1) the mutually opportunistic alliance with Sihanouk whose recorded messages on cassette tapes distributed in rural areas urged peasants to join the Khmer Rouge to fight against the Lon Nol regime; (2) the Khmer Rouge’s appeal to the same peasants to help restore Sihanouk to power; (3) the heavy bombing carried out by U.S. planes that devastated the countryside in eastern Cambodia and alienated the rural population; (4) the military and political aid from North Vietnam during the first two years of the civil war; and (5) the Khmer Rouge’s own increasingly effective military prowess.<sup>6</sup> Half a million people died during the civil war and at least three million were displaced out of a total population of less than eight million.

Once victorious, the Khmer Rouge changed the name of the country to Democratic Kampuchea and set out, with methodical brutality, to transform every aspect of Cambodian society. The very afternoon of the day they captured Phnom Penh, they ordered its population (that had swelled from half a million to more than two million during the civil war) to evacuate the city and go to their ancestral villages. Even patients in hospitals were forced to move, some being pushed along while lying on gurneys. Along the way, Khmer Rouge cadres cajoled people, at gunpoint, to tell their life stories so that former government officials and military commanders, educated people, professionals of every kind, merchants, and landlords could be identified. Branded as enemies of the people, these unfortunate individuals were shot or bludgeoned to death. The Khmer Rouge defrocked Buddhist monks, the most revered persons in traditional Cambodian society, forced them to work in the fields, and killed many of them. They used Buddhist temples to store their weapons and ammunition. Barely a year after coming to power, Pol Pot ordered his most trusted henchmen to arrest, imprison, torture, and execute thousands of individuals among the Khmer Rouge’s own officials, political cadres, and military commanders, including a large number of high-ranking ones, whom he suspected of being disloyal to him. The Khmer Rouge closed schools and colleges, and abolished private property, money, banks, markets, hospitals, Western medicine, and all other modern institutions. They let vehicles and machinery rust in the humid tropical climate because they opposed the use of such symbols of Western modernity. They separated husbands from their wives and children who were older than seven from their parents. They also trained children to spy on their parents and interrogated the youngsters about what their parents had talked about.<sup>7</sup> The entire country was turned into a giant slave labor camp: people had to plant and harvest crops, as well as build dams and levees, with their bare hands while subsisting on meager bowls of thin rice gruel. Starving individuals who dared to catch fish, mice, lizards, and other creatures or to look for wild plants to eat were severely punished or even killed.

The Khmer Rouge persecuted ethnic minority groups in ways that historian Ben Kiernan has argued can be considered genocide.<sup>8</sup> They forced members of the Cham ethnic minority, who were Muslims, to eat pork (a food proscribed by Islam) and to use their mosques as pig sties. An estimated one-third of the Cham died during Khmer Rouge rule. They expelled about 150,000 of the approximately 400,000 ethnic Vietnamese who had lived in Cambodia for generations. As they massacred the Vietnamese, they threw the bodies into the Mekong River so that the corpses could float downstream to southern Vietnam to taunt the Vietnamese. About half of the 400,000 ethnic Chinese, who had also lived in Cambodia for generations and who had controlled much of Cambodia’s retail trade, also lost their lives because as petty capitalists, they, too, were considered enemies of the people. The Khmer Rouge also persecuted and killed indigenous minority groups.

Communist ideology alone cannot fully explain the Khmer Rouge's blood-thirsty extremism. Pol Pot and his most loyal comrades were not just Communists but they were simultaneously paranoid and megalomaniac as well. They wanted to create a "pure" peasant society cleansed of all Western and modern "contamination" so that Democratic Kampuchea could become the "most advanced" society in the world overnight. According to the Marxist theory of historical materialism, societies evolved, over long centuries, from the "primitive communism" of hunting-gathering communities to slave societies, next to feudalism, then to capitalism, after that to socialism, and finally to communism. However, the Khmer Rouge bragged they could leapfrog over other societies and bypass these various stages of development. Moreover, their utopian goal was not the Marxist one of developing an industrialized Communist economy and society in which individuals would make contributions each according to his or her ability and be supported each according to his or her needs. Rather, what they desired was an agrarian economy dominated by peasants even though most Khmer Rouge leaders did not come from peasant origins themselves. In their desire for instantaneous societal transformation, terror was the Khmer Rouge's weapon of choice, not only against external enemies but internal ones as well. In the words of Kenneth Quinn, the Khmer Rouge's violence served four functions: "to destroy the old society and its social, political, economic, and cultural infrastructure," "to force the entire society into new socioeconomic patterns," "to counter revisionism and coups d'etat from within," and "to eliminate threats posed by Vietnam and perceived collaborators of the Vietnamese."<sup>9</sup> The paranoia over Vietnam was not unique to the leadership; rather, anti-Vietnam sentiments have deep historical roots among most Cambodians. During the three years and eight months they ruled the country, from mid-April 1975 to the first week of January 1979, an estimated 1.5 to 1.7 million persons, out of an estimated total population of 7.9 million, perished from torture, executions, starvation, overwork, illness, and exposure to the elements. When added to the half million who had died during the civil war, the carnage included more than a quarter of the country's total population.

## The Vietnamese Occupation and a New Civil War

Some mid-level Khmer Rouge military commanders and political cadres who opposed Pol Pot's extreme policies and savage practices escaped to Vietnam in 1977 and 1978. They returned to Cambodia in late December 1978, accompanied by 120,000 Vietnamese troops, to topple the Khmer Rouge government. They met no resistance as they marched from the Cambodian-Vietnamese border to Phnom Penh. The Khmer Rouge leaders and about 40,000 of their troops fled into the jungles in northwestern Cambodia in early January 1979, taking with them tens of thousands of civilians forced to act as porters to carry the retreating group's provisions, ammunition, and weapons. Among the former Khmer Rouge returnees were two young men, Heng Samrin (in his thirties) and Hun Sen (in his late twenties), who set up a new government supported by Vietnam. They renamed the country the People's Republic of Kampuchea. A second low-intensity civil war then began, with fighting concentrated in western Cambodia during the dry season (December to April) every year for the next twelve years, pitting three groups—the rump Khmer Rouge who had decamped in northwestern Cambodia and two non-Communist groups, one loyal to Sihanouk, the other followers of a former prime minister, both of which had set up camps along the Thai-Cambodian border—against the Vietnamese-sponsored government in Phnom Penh.<sup>10</sup> To Cambodians, the presence of Vietnamese troops was a painful reminder of an earlier development centuries ago when the Khmer kingdom had lost a vast expanse of territory in the Mekong Delta to Vietnam. Because the United States likewise considered the Vietnamese occupation as a hostile act of aggression, it sent military and economic aid to the groups fighting against the Hun Sen–Heng Samrin government backed by Vietnam. This aid supposedly was intended for only the two non-Communist groups, but in fact some of it also reached the Khmer Rouge fighters.<sup>11</sup> Even more ironic was the fact that the United States and its allies, together with China (the strongest supporter of the Khmer Rouge), recognized the coalition that the three anti-Phnom Penh groups had formed as the "legitimate" government of Cambodia, thereby affirming its right to hold Cambodia's seat in the United Nations.<sup>12</sup> In the words of journalist William Shawcross, "Much of the world—not just the Western world and ASEAN [Association of South East Asian Nations]—had chosen to see the Khmer Rouge first as the defenders of national sovereignty rather than as the perpetrators of mass crimes against humanity."<sup>13</sup>

Various efforts to find a political settlement all failed until Vietnam withdrew its troops in 1989. It did so because it could no longer support a large army of occupation, given several years of poor harvests in Vietnam in the late 1980s and an unanticipated reduction in Soviet military and economic aid as the Soviet Union itself began to disintegrate. Equally important, throughout the decade that Vietnamese troops occupied Cambodia, the United States and its allies exerted enormous diplomatic pressure against Vietnam,

demanding that it withdraw its troops from Cambodia. After the Vietnamese troops were finally withdrawn, the Phnom Penh government changed the name of the country to State of Cambodia. The United Nations managed to broker a peace agreement and created the United Nations Transitional Authority in Cambodia in late 1991 to oversee the repatriation of more than 360,000 Cambodian refugee-seekers from the Thai-Cambodian border.<sup>14</sup> After UN-supervised elections in 1993, Prince Sihanouk was re-crowned king and the name of the country changed back to Kingdom of Cambodia. The Khmer Rouge, however, continued hostilities until the late 1990s when several key leaders surrendered to the Phnom Penh government. In 2004 Sihanouk abdicated for a second time and became “King Father” while one of his sons ascended the throne. Hun Sen is still in power today, serving as the prime minister, the president of the Cambodian People’s Party, and a member of parliament.

## The Cambodian Refugee Exodus

A small number of Cambodians managed to escape the Khmer Rouge horrors in three separate waves. The first wave of a little over 5,000 people found sanctuary in April and May 1975. In March of that year, the administration of President Gerald Ford set up an Interagency Task Force to handle the potential refugee outflow as the Phnom Penh and Saigon governments seemed about to fall. U.S. officials allocated 130,000 slots for potential refugees, of which 125,000 were reserved for South Vietnamese and 5,000 for Cambodians. Only 4,600 of the slots for Cambodians were filled, mainly by Khmer Republic Air Force pilots who flew themselves and their families and friends to Thailand, Khmer Republic Navy personnel who sailed their vessels into international waters, diplomats serving in Cambodian embassies and consulates in foreign countries, and other Cambodians who happened to be outside the country at the time.<sup>15</sup> The United States also offered to airlift out of Phnom Penh a thousand government officials, military commanders, and other Cambodians who had worked closely with Americans as the U.S. embassy in Phnom Penh closed down on April 12, 1975. Fewer than nine hundred Cambodians accepted the offer, partly because many individuals optimistically believed that once war ended, Cambodians of various political persuasions could once again get along with one another. The first wave of refugees entered the United States under the parole power of the U.S. attorney general—that is, by executive rather than congressional legislative authority because at that time the U. S. Congress had not yet passed a refugee law. Because the Khmer Rouge had killed about 90 percent of the country’s educated middle and upper classes, this first wave of well-educated Cambodian refugees, who did not suffer the trauma of living under Khmer Rouge rule, became crucial leaders in the Cambodian American communities that sprang up on American soil from the mid-1970s onward.

A second wave of refugee-seekers was made up of people who had successfully escaped overland to Thailand during the Khmer Rouge regime. (An unknown number died along the way, shot by Khmer Rouge soldiers who caught them or dying from sickness, injuries, or hunger.) The earliest arrivals were classified as “displaced persons,” interviewed by representatives from international organizations, processed as refugees, and resettled in Western countries. By 1978, some eight thousand persons who had prior relationships with the French or Americans had been cleared for resettlement. The United States admitted about three thousand of them. A larger group of about ten thousand rural Cambodians who lived near the Thai-Cambodian border also found their way to Thailand. The United States admitted about six thousand of this group. They, too, entered the United States under the parole authority of the U.S. attorney general.<sup>16</sup> During this same period, an estimated one-quarter million ethnic Vietnamese and an unknown number of ethnic Chinese in Cambodia fled to Vietnam. It is not known how many of these people eventually found their way as refugees to Western countries. The Khmer Rouge had planted land mines along both the Cambodian-Thai and the Cambodian-Vietnamese borders, so a significant portion of these would-be refugee-seekers was blown to pieces before they found refuge.

The third wave of refugees fled Cambodia after the Khmer Rouge regime was overthrown. At first, there was no immediate exodus because people’s first priority was to travel all over the country in search of family members from whom they had been separated but who might still be alive. After a few months, however, the outflow of refugee-seekers resumed and rapidly increased in volume. Many people were on the verge of starving to death because farmers could not harvest the January rice crop during the chaos that accompanied the Khmer Rouge retreat into the jungles. Besides Cambodians, refugee-seekers from Laos and Vietnam also found their way to the Thai-Cambodian border. Overwhelmed by their numbers, the government of Thailand stopped giving the new arrivals the same presumptive refugee status that members of the earlier groups had



received. At the height of the influx, there were half a million refugee-seekers on Thai soil—a number equal to about 1 percent of the total population of Thailand. Thai officials considered their presence to be a security threat and an unacceptable drain on the country's resources.

## Thailand's Dilemma

Thailand had not signed the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees that mandated how refugees should be treated, so Thai officials could act autonomously. While Thailand allowed the United Nations High Commissioner for Refugees (UNHCR) to build refugee camps on Thai soil to house the refugee-seekers and to feed them, Thai authorities administered the camps themselves. The Thai government relied on two of its own laws—the 1954 Regulation Concerning Displaced Persons from Neighboring Countries (passed when thousands of Vietnamese were crossing the border into Thailand to escape the ravages of the First Indochina War in the early 1950s) and the 1970 Immigration Act—to deal with the massive influx.<sup>17</sup>

In 1979 an international conference held in Geneva and attended by participants from sixty-five countries discussed how the dire refugee-outflow situation in Southeast Asia could be dealt with. Conference participants agreed that neighboring “countries of first asylum” (Thailand, Malaysia, Singapore, Indonesia, the Philippines, and the British crown colony of Hong Kong, which was treated as though it were a country) would continue to house the refugee-seekers temporarily while “countries of second asylum” (also called resettlement countries—primarily the United States, Canada, Australia, and France, as well as dozens of other countries that also accepted small numbers for resettlement) would increase their intake of refugees. The conference, however, addressed only the issue of the “boat people” from Vietnam who had fled by sea but not the “land people” pouring overland into Thailand.<sup>18</sup> In desperation, Thailand implemented a policy of “humane deterrence” to deal with the situation. Instead of labeling the refugee-seekers as “displaced persons” as it had done earlier, the Thai government now considered them to be “illegal immigrants” or “illegal entrants” and refused to allow international organizations to interview them for potential resettlement abroad fearing that such a prospect would act as a magnet to attract even more refugee-seekers to its borders. It announced that henceforth the refugee camps would be run on an “austere” basis, providing only the barest of necessities.<sup>19</sup> Thailand closed its borders and began to deport the refugee-seekers. After one effort to deport forty thousand Cambodians, during which a vast majority died from land mine explosions—an incident that caused an international outcry—the Thai government stopped sending people back into Cambodia.<sup>20</sup> Moreover, when the Thai prime minister in October 1979 visited the camps housing the bedraggled, emaciated refugee-seekers (many of whom were Khmer Rouge soldiers who had been pursued by Vietnamese troops for months), he was so deeply moved by the pitiful sights he saw that he ordered the border to be re-opened. But a coup soon ousted him and the new prime minister closed the border again after it had been open for only three months.

The Thai attitude toward Cambodians was considerably harsher than that toward refugee-seekers from Laos and Vietnam. Before 1989, Lao, Hmong, and other groups from Laos, as well as Vietnamese, were placed into camps set up by UNHCR where they were interviewed and eventually resettled. In contrast, Thailand feared that if it treated Cambodian refugee-seekers in a similar fashion, millions of them might make their way into Thailand to escape the Cambodian civil war. The Thai government also worried that if Cambodia were to be emptied of its population, the Vietnamese army occupying Cambodia could more easily amass along the Cambodian-Thai border to threaten Thailand's internal security. Thailand had always considered Cambodia as a buffer state that hindered Vietnamese attempts to encroach upon Thai territory. For that reason, Thai leaders tolerated the presence of the Khmer Rouge, as well as the two non-Communist groups, camped along the Thai-Cambodian border because they, too, served as a buffer to keep the Vietnamese army then occupying Cambodia at bay.<sup>21</sup>

There were two kinds of camps along the Thai-Cambodian border: “refugee camps” set up by UNHCR within Thailand's national boundaries and “border camps” just inside Cambodian territory. People placed into refugee camps could be interviewed for potential resettlement but those in border camps could not as the Thai government did not allow UNHCR to enter the border camps. In 1982, the United Nations established a temporary agency, the United Nations Border Relief Operation (UNBRO) but it did not have the same mandate as UNHCR to determine which individuals were bona fide refugees and to arrange for their resettlement. Even though UNBRO was supposed to oversee aid for the 300,000-plus Cambodians in the

border camps, what it could do was limited as all food supplied by international agencies destined for border camp residents had to be handed over to the Thai military, which then transported it to the camps, where it was distributed by self-styled Cambodian “warlords” who siphoned off a large portion of the food and sold it on the black market to enrich themselves.<sup>22</sup>

Those Cambodians who managed to cross the border during the three months when it was open were housed initially in a makeshift camp named Sakeo that consisted only of blue plastic tarps hung from poles. These structures with no walls were erected overnight in a rice paddy with poor drainage. When it rained, the ground turned to thick mud. Germs bred in the open pit toilets and many people died from disease and exposure to the elements. This horrendous situation was broadcast around the world when Mrs. Rosalyn Carter, the wife of President Jimmy Carter, visited Sakeo and the journalists and photographers who came along with her wrote about and filmed images of Sakeo's abominable conditions, arousing humanitarian concerns in the United States and in other countries.<sup>23</sup> In November 1979, the Thai government asked UNHCR to construct a larger, more permanent camp named Khao I Dang to house the Cambodians. Most of the people who found their way into Khao I Dang (including sizeable numbers who managed to enter the premises in the dark of night after international aid workers had left for the day) were eventually admitted into the United States. What made this possible was the pressure exerted on Congress and President Jimmy Carter and then President Ronald Reagan by the U.S. ambassador to Thailand and some of the embassy staff in Bangkok, as well as by various humanitarian organizations that advocated strongly on behalf of the Cambodians.<sup>24</sup> What also helped was that several congressmen championed efforts to admit Cambodian refugees into the United States.<sup>25</sup> These Khao I Dang residents comprised the third and largest wave of Cambodian refugee-seekers. To this day, however, many Cambodians still harbor negative feelings toward Thailand for the harsh existence they endured in the camps.

## Resettlement in the United States

Partly in response to the international emergency caused by the seemingly unceasing outflow of refugee-seekers, Congress passed the 1980 Refugee Act. But it was difficult to determine exactly who among the residents of Khao I Dang qualified as bona fide refugees because the only persons who might suffer persecution if they were sent back to a Cambodia ruled by the Vietnamese-supported government were the Khmer Rouge.<sup>26</sup> No resettlement countries wanted to admit any Khmer Rouge soldiers or cadres. Despite that fact, some Khmer Rouge members did end up in the United States as refugee advocacy groups pressured U.S. immigration officials to speed up their case-by-case review effort in order to admit as many Cambodians as quickly as possible.<sup>27</sup> The U.S. Cambodian refugee program ended in 1994. Between 1975 and 1994, a total of 157,518 Cambodians were admitted into the United States—148,665 as refugees, 6,335 as immigrants who had family members in the United States to sponsor them, and 2,518 as humanitarian and public interest parolees who did not qualify for refugee status but who were deemed deserving of admission nevertheless.<sup>28</sup> Cambodians admitted into the United States after 1994 have come as immigrants and not as refugees, but the number per year has been small. American-born children and youth of Cambodian ancestry are the fastest growing segment of the ethnic Cambodian population in the United States today.

After passage of the 1980 Refugee Act, a newly established Office for Refugee Resettlement (ORR) with branches in every state took responsibility for overseeing refugee resettlement. Resettlement officials aimed to disperse the refugees from Vietnam, Laos, and Cambodia widely in order to minimize the financial, educational, and social-services burdens on any single locality. Many factors determined where the refugees would end up. Among the most important, in the eyes of ORR, were, first, the location of existing voluntary service agencies that ORR could contract to carry out the work of finding sponsors—be they individuals, families, church groups, or local organizations—who were willing and able to either house them temporarily or help find housing for them, give them money to buy food, help them find jobs, sign them up at community service agencies and in state welfare programs, enroll their children in schools, enroll adults in English-as-a-Second-Language programs or vocational training courses, and get them health care. Second, ORR tried to find out whether the refugees had relatives or friends already in the country who could help them adapt to life in an industrial, modern society, in which many aspects of life were unfamiliar to rural people who had been farmers, fishermen, or non-industrial workers. Third, ORR looked for cities that had plentiful cheap housing. Fourth, resettlement officials searched for localities that had entry-level jobs that did not require an ability to understand and speak English. The refugees themselves had a different set of concerns. They wanted to

rejoin family and friends, if any were in the United States; live in a locality with a Buddhist temple; settle down in places with a warm climate as they were used to living in the tropics; and live in states where they thought they would have a good chance of finding the means to support themselves economically through gainful employment, or qualifying for public assistance, or a combination of the two.<sup>29</sup>

Historically there had been no immigration from Cambodia into the United States, so there were no existing Cambodian ethnic communities when the first wave of refugees arrived. However, Long Beach, California, quickly became the “Cambodian capital of America” due to the fact that in the late 1950s and 1960s, the Cambodian government had made arrangements with two California State University campuses—one in Los Angeles (not to be confused with UCLA) and the other in Long Beach—to enroll students from Cambodia in engineering and other technical courses there. When Prince Sihanouk broke off diplomatic relations with the United States, those programs ended. However, several dozen students either remained in California or went home but later came back to the United States on their own. When the first group of Cambodian refugees arrived at the U.S. Marine Corps Base in Camp Pendleton in southern California, the former students went to visit their compatriots, brought them Cambodian food, and eventually sponsored many of them who then settled in Long Beach. They transformed the Cambodian Students Association they had founded earlier into the Cambodian Association of America—the first Cambodian mutual aid association organized and incorporated in the United States. This organization, along with other mutual aid community associations established later, played crucial roles in helping the refugees in multiple ways.<sup>30</sup> Long Beach now has the largest population of Cambodian ancestry outside of Cambodia itself.

A second city in which Cambodian refugees congregated in large numbers was Lowell, an old textile-mill town in Massachusetts. That unanticipated development also came about by chance. A protestant minister, Peter Pond, had worked among Cambodian refugees in Thailand. Upon returning to his home in Massachusetts, he began a campaign to make Massachusetts into a “refugee-friendly” state. He sought and obtained the assistance of Mrs. Kitty Dukakis, the wife of then-governor Michael Dukakis. She persuaded her husband to get various state government agencies involved in resettling refugees in Massachusetts. Governor Dukakis signed an executive order in 1983 to establish a Governor’s Council for Refugees and Immigrants; two years later he signed another executive order to instruct state agencies to help refugees find employment. Two other fortuitous developments that led to the growth of an ethnic Cambodian community in Lowell were the presence of several electronics assembly plants in Lowell and the arrival of a senior Buddhist monk in the area. In 1976 An Wang, a Chinese American information technology entrepreneur, had relocated the headquarters of Wang Laboratories to Lowell. Raytheon and Digital Equipment, two other large electronics manufacturers, had also set up assembly plants in Lowell. These companies began to hire Cambodians and other Southeast Asian refugees because electronics assembly work does not require a good knowledge of English. Instead, workers have to be patient, careful, and precise. Employers believed that Asian women, in particular, would be good at this kind of work because they were said to have excellent “hand-eye coordination.” As Cambodians elsewhere in the country heard about their compatriots being hired in large numbers in Lowell, many moved to that city. Unfortunately, Wang Laboratories encountered problems and had to file for Chapter 11 bankruptcy in 1992, laying off the bulk of its employees. But by that time Cambodian in-migration had developed a momentum of its own. Meanwhile, a revered Buddhist monk, who was one of the few senior monks to have survived the Khmer Rouge period, was invited to come to the United States to serve in a Buddhist temple established in North Chelmsford, a nearby community. His presence became another magnet that drew Cambodians to the Lowell area. In time, the Cambodian population in Lowell grew so large (at its height, Cambodians comprised a quarter of Lowell’s total population) that their community was dubbed “the Long Beach of the East Coast.”<sup>31</sup>

Within California, other localities where Cambodian American communities developed include the greater San Diego area, towns and cities in the San Joaquin and Sacramento valleys, and the San Francisco Bay Area. Communities also sprang up in towns and cities in other states, including Massachusetts, Rhode Island, Pennsylvania, the Washington, D.C. area, Virginia, Georgia, Florida, Illinois, Ohio, Texas, Utah, Arizona, Oregon, and Washington State.<sup>32</sup> Some of these places were chosen by a “demonstration project” called the Khmer Guided Placement Project (also known as the Khmer Cluster Project) that ORR undertook in partnership with the American Council of Voluntary Agencies for Foreign Service and the Cambodian Association of America. ORR was concerned that large numbers of Cambodians (like refugees from Vietnam and Laos) were embarking on “secondary migrations,” moving away from the places where they had initially been placed to localities with large numbers of their compatriots.<sup>33</sup> ORR did not wish to see the social service



agencies, schools, and public assistance programs in those burgeoning ethnic communities in places that already had a large number of refugees be overwhelmed by more refugees and their school-age children than they could handle. Because almost every Cambodian family had lost members during the “killing fields” years under the Khmer Rouge, most who arrived in the U.S. had few kinsmen who might have already settled into communities with a large number of their co-ethnics. ORR thought it would be easier to persuade such truncated families to move away from localities already full of Cambodians. The project aimed to settle between three hundred and a thousand Cambodians each in a dozen or so cities that did not yet have a large number of Indochinese refugees, that had relatively cheap housing, plentiful entry-level jobs, adequate social services, and where a few Cambodians already lived who could serve as the nuclei around which new medium-sized ethnic communities could develop. By creating these ethnic clusters, ORR hoped the people themselves could provide one another with social and emotional support and organize themselves for self-help projects. A total of about eight thousand Cambodians were moved from California to Boston, New York City, Rochester (New York), Richmond (Virginia), Atlanta, Jacksonville (Florida), Chicago, Cincinnati, Columbus, Dallas, Houston, and Phoenix.<sup>34</sup> Even though the project encountered numerous problems, some arising from poor planning and lack of coordination among the agencies involved and others due to the existence of deeply-felt factionalism within the refugee population whose members supported competing political groups in their homeland, the only site that turned out to be a failure was New York City. The rural folks from Cambodia simply could not adjust to life in a crowded, fast-moving, high-powered, global city. What made the situation intolerable was that the neighborhoods into which they were placed were crime-ridden: burglars terrified the Cambodian residents as they robbed the latter’s homes. By the time the 1990 U.S. census was taken, Cambodians could be found in all fifty states.<sup>35</sup>

## Issues in Contemporary Cambodian American Ethnic Communities

Regardless of where they settled, Cambodians have encountered enormous difficulties in the United States. They have faced, broadly speaking, two sets of challenges: first, how American society has received and treated them, and second, how their own history has engendered hardships that few other immigrant groups have ever had to face. In their new home, they have been simply the latest group to experience a long history of troubled race and ethnic relations in the United States, in which non-white peoples and immigrants from countries other than those in western Europe have been the targets of prejudice, bigotry, racism, institutionalized inequality in the labor market, social injustice, and political disenfranchisement.<sup>36</sup> Yes, it is true that many American individuals and organizations with humanitarian impulses have tried to help them, both before and after they arrived in the United States, but those acts of kindness do not fully compensate for the negative receptions they have faced since they landed in the United States. Anthropologist Aihwa Ong has argued that the way they have been treated is a clear example of how they have been “subjected . . . to a variety of human technologies that conspire . . . to make them particular kinds of ethnic minorities, laboring subjects, and moral beings.” In short, seen within the Foucauldian theoretical framework used by Ong, they have been disciplined, regulated, and governed by the American welfare state’s policies and practices, but they have also exerted their own agency as human beings by evading or struggling against the values and norms being imposed on them.<sup>37</sup>

As with any group of newcomers, finding a way to earn a living was a first priority. However, with the exception of the first wave of refugees who came in 1975, the later arrivals had few transferable job skills, could not speak English, were unfamiliar with urban life in an industrialized society, and had suffered enormous trauma. Most of the well-educated, English-speaking 1975 arrivals managed to find white collar jobs even though many had to change their line of work—for example, transforming themselves from engineers, teachers, lawyers, health professionals, government officials, or military officers into social workers who served as intermediaries—as community organization directors, grant-proposal writers, or interpreters—between the refugees and government agencies or non-governmental organizations that interfaced with Cambodian American ethnic communities. Other people with professional skills decided not to go through the trouble of studying for and passing the licensing examinations required to practice various professions in the United States. Instead, they became owners and managers of small businesses, such as restaurants, donut shops, grocery stores, and jewelry stores. A significant proportion of these business entrepreneurs are not Khmer but are ethnic Chinese from Cambodia. Until the turn of the 21st century, these members of the former

Cambodian elite comprised no more than an estimated 5 percent of the Cambodian refugee population in the United States.<sup>38</sup>

A much larger number, made up of those who came after 1979, became the working poor. Depending on where they lived and what industries were located in those places, they have earned a living working in electronics assembly plants; in meat packing, chicken processing, and seafood processing facilities; in textile mills and garment sewing factories; in factories manufacturing plumbing and heating equipment, furniture, and machines; as carpenters in construction sites; as janitors in office buildings, maids in hotels, and kitchen help in restaurants; and as seasonal farm laborers. Many women for the first time worked for wages outside of the home. Families with two or more income-earners or individuals working two jobs joined America's working poor or lower middle class, becoming self-sufficient in fairly short order, proudly able to fend for themselves in their new environments even though some scholars consider them to be part of the American "underclass."<sup>39</sup> The group that had the hardest time adapting to life in American society consisted of households headed by women, especially widows whose husbands had been killed during the Khmer Rouge years. Depending on the location, it is estimated that between 30 to 70 percent of Cambodian refugee families had female heads of households. These women had no experience earning a living in a competitive wage labor market even though in their homeland they had played critical roles to support their families by doing farm work, weaving, sewing, cooking, gathering firewood, fetching water, washing clothes, cleaning house, and raising children. Women with young children had to stay home to take care of them, so they could not enroll in English-as-a-Second-Language courses or get job training. In most instances resettlement officials and social workers enrolled them in refugee assistance programs almost immediately upon their arrival because that was the most expeditious way to have the newcomers taken care of. Congress had appropriated funds for a Refugee Cash Assistance Program as well as a Refugee Medical Assistance Program. Initially, refugees were eligible to receive such assistance for three years. Then, the eligibility period was reduced to eighteen months, later to eight months, and finally to three months. When a refugee's eligibility ran out, he or she could enroll in the regular welfare program funded jointly by the federal government and state governments. However, after Congress enacted welfare reform by passing the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, under which block grants would be given to individual states to use as they see fit, welfare-dependent individuals and families now faced a lifetime limit of five years of eligibility.<sup>40</sup> In addition, undocumented aliens and immigrants who arrived after August 22, 1996, when welfare reform took effect, could no longer receive food stamps, Supplemental Security Income (for the aged and disabled), or Medicaid (the federal medical insurance program for the poor). Advocates of the poor, as well as state governors, protested these drastic measures—the latter fearing their state budgets might be overburdened with the withdrawal of federal support for a sizable population of indigent non-citizens within their states. In response, Congress restored some benefits, including allowing SSI payments to immigrants and recently naturalized citizens with physical disabilities, food stamps (now known as the Supplemental Nutrition Assistance Program) for immigrant children under age sixteen and immigrants older than sixty-five who had arrived before welfare reform went into effect.<sup>41</sup> No researcher has studied how Cambodian American families or individuals suffering from physical or mental disabilities managed to sustain themselves after they were no longer eligible for public assistance. Since 1996, recipients of welfare have had to prepare themselves for work. In the case of Cambodian refugee men and women who had maimed bodies or troubled minds, it is not clear what kind of jobs they can be trained to do.

Regardless of what socioeconomic status they have attained, Cambodian American families have had to adapt to life in the United States, just as all other immigrants have to do. At the same time, most immigrants also desire to preserve the cultures of their homelands. Among Cambodians there is an added poignancy related to this process: they have had to resuscitate their culture from memory because the Khmer Rouge had thoroughly destroyed all important facets of Cambodian society. Cambodians who have survived the agonies of what they call "Pol Pot time"—both those who have remained in Cambodia and the ones who have been resettled in many countries around the world—feel deeply compelled to revive Cambodian dance, music, art, religion, and social mores, all of which had met their demise under the Khmer Rouge. But bringing about cultural revival has been a difficult challenge as many young people in both Cambodia and abroad are now more interested in global cultural streams emanating not only from the West but also from other Asian countries than in the civilizational achievements of their forebears.<sup>42</sup> But some young Cambodian Americans have used forms of popular culture, such as hip hop, to do what one scholar calls "memory work" as it relates to war, genocide, and justice.<sup>43</sup>

Women in particular have had to confront the challenge of negotiating and melding different cultural traditions. Even though in Southeast Asian societies, including Cambodia, women enjoy a higher status than do women in East Asia, where Confucian philosophy that mandates hierarchical social relations has been deeply entrenched, women in Southeast Asia are still expected to be submissive and respectful to men and to older people. Cambodian girls growing up in the United States live under many social constraints. A major source of intergenerational conflict is the fact that boys are allowed to go out and socialize freely but girls are not once they reach puberty. Cambodian young women who aspire to be economically independent have had to surmount many hurdles, not the least of which is their parents' desire for them to marry and produce children rather than pursue professional careers. Husbands, for their part, may feel threatened by wives who may earn more than they do, and especially by those women who grow accustomed to behaving more assertively not only in the workplace but also within their homes.<sup>44</sup>

Another source of difficulty is that a large number of Cambodian refugees in the United States suffered from post-traumatic stress disorder as a result of what they were forced to witness and to experience during the Khmer Rouge era. The trauma they suffered was so devastating that it was "reactivated" in some Cambodian refugees when they witnessed the aerial attacks on the World Trade Center's twin towers and on the Pentagon.<sup>45</sup> Moreover, even children who did not live through the horrors of the Khmer Rouge era but are growing up in households in which one or more adults are suffering from post-traumatic stress disorder can also be affected by it.<sup>46</sup> Yet, there were and still are few programs, either in their own ethnic communities or in American society at large, set up to help them heal. Many sufferers turn to Buddhist monks for counsel and support—a fact that underlines why so many Cambodians in the United States want to live in places with Theravada Buddhist temples and Khmer-speaking resident monks. They do so not just because they are religious, but also because they yearn for solace and understanding not available elsewhere.<sup>47</sup> In their homeland, a common adage is, "To be Khmer is to be Buddhist." That religion and its precepts infuse every facet of life among people of Cambodian ancestry.<sup>48</sup> In the United States, it may be said, "To be Buddhist is to find social support." That is why even very poor Cambodian Americans contribute whatever they can afford to funds being raised to build Buddhist temples in their ethnic communities in the United States and to help rebuild temples that the Khmer Rouge had destroyed or desecrated in Cambodia itself.

Unlike many Asian immigrant families with well-educated parents or even not-so-well-educated adults who nevertheless still place their hopes for socioeconomic advancement on their children who are expected to excel in school and to find well-paying, well-respected jobs, few Cambodian families in the early decades of their settlement in the United States could depend on this avenue of upward social mobility. One reason has to do with where resettlement workers had placed them. Given the imperative for finding "cheap" housing for them, most refugees ended up in inner city neighborhoods where gang warfare has been rampant. Not surprisingly, Cambodian youth established gangs of their own in order, initially, to protect themselves from school mates who taunted them or worse, gang members who attacked them as they walked to school and back to their homes. Living in households where parents and children were acculturating to the American way of life at different rates or in households where the adults themselves were in distress, in a society where people of color still encounter prejudice and racism, Cambodian children growing up in America desired acceptance and understanding that were not forthcoming either at home or in school. Some dropped out before they graduated from high school, while others turned to gangs because they found camaraderie among fellow gang members. But in time, some gang members were lured into criminal activities with the hope of making quick money. Some Cambodian gang members have been killed, others arrested and imprisoned, and yet others deported.<sup>49</sup> A second reason that most Cambodian American youngsters do not reflect the "model minority" image of other Asian American students, as pointed out by numerous Cambodian community leaders, is that children living in families with adults who had little education and therefore could not help them to do well in school had few role models at home or among their peers that could show them how to succeed in American society. Equally important, Cambodians have a different definition of "success." To them, following the Theravada Buddhist precept of the "middle way" means "not demanding too much of a child, not expecting more than the child can deliver."<sup>50</sup> Hence, seldom is there parental pressure to get straight A's or win awards as is the case in other Asian immigrant families.

Despite their difficult beginnings in the United States, in recent years the situation has been improving slowly in Cambodian ethnic communities as the rate of new immigration from Cambodia has been relatively low compared to immigration from other Asian countries, which means that a larger and larger segment of the Cambodian American population is now born, raised, and educated in the United States. Some young people

with a college education, professional job skills, and entrepreneurial ambitions have found good jobs in the United States while others have returned to Cambodia to work there for short stints in order to participate in that country's reconstruction and to find business opportunities for themselves. Even though Cambodia is still ruled by an authoritarian government rife with corruption, the dark clouds of its Khmer Rouge past are finally beginning to lift, not only for those who survived "Pol Pot time," but also for those who grew up in households where that legacy has affected negatively so many aspects of their lives.

## Discussion of the Literature

Numerous journal articles and several edited anthologies were published when Cambodian refugee-seekers were still in refugee camps in Thailand or in border camps along the Thai-Cambodian border during the 1980s and early 1990s. Most of the authors were professionals who had gone there to provide medical aid and social services to the refugee-seekers. Not surprisingly, the writings published in that period reflect the concerns of these professionals more than they do the perspectives of the Cambodian refugee-seekers themselves. After Cambodians began arriving in the United States, a dozen or so who knew English published their autobiographies or told their life stories to journalists and other writers who turned such accounts into books. These personal narratives focus almost exclusively on the authors' lives under the Khmer Rouge and almost all the books end the moment the authors stepped on American soil. After Cambodians were resettled in the United States, health and mental health professionals, social workers, and educators continued to write about them. A significant portion of those journal articles deals with the mental health issues that Cambodian refugees have had to confront—a legacy of the brutality they had experienced under the Khmer Rouge. Additional personal narratives have continued to appear from the mid-1990s well into the second decade of the 21st century. Even though they also tell tales of horror as the earlier works had done, more space is given in the latter batch of personal narratives to how the authors are coming to terms with their homeland's past as they build meaningful lives in the United States.

In comparison, academic book-length studies of the post-arrival lives of Cambodian refugees, immigrants, and U.S.-born Americans of Cambodian ancestry are sparse. Only half a dozen or so scholars have published books about the experiences of Cambodian Americans after they resettled in the United States. Anthropologist Carol Mary Hopkins (1996) presents an intimate portrait of everyday life within Cambodian American families and households and the important role played by Buddhist rituals in sustaining their spirits. Sociologist Jeremy Hein has produced two books: the first (1995) is a comparative overview of why Vietnamese, Laotian, and Cambodian refugees came to the United States and how they have adapted to life in this country, and the second (2006) examines the Cambodians' modes of adaptation and incorporation in several U.S. cities in comparison with patterns found among Hmong refugees. Anthropologist Nancy J. Smith-Hefner (1999) studies how Theravada Buddhism infuses major aspects of Cambodian culture and continues to shape the structure of Cambodian ethnic communities in the post-resettlement period. Anthropologist Aihwa Ong (2003) applies concepts expounded by Michel Foucault to dissect how and why U.S. federal, state, and local officials and staff in private agencies have slotted Cambodian refugees into the lowest echelon of American society. Historian and social scientist Sucheng Chan has published two books: the first (2003) is a collection of transcribed conversations with English-speaking Cambodian community leaders in the United States who discuss the many challenges their people have faced, and the second (2004) is a comprehensive work of synthesis that draws upon almost the entire existing literature, unpublished and published (as of 2004), written by historians, sociologists, anthropologists, political scientists, medical doctors, psychologists, psychiatrists, social workers, and other professionals, plus autobiographies, biographies, and unpublished oral histories produced by Cambodian Americans, to depict multiple facets of how Cambodians endured an unimaginably harsh existence under the Khmer Rouge, kept themselves alive in the dangerous conditions within the refugee camps in Thailand, and struggled in the United States to rebuild their shattered lives. The latter book is the only one published to date that focuses on the continuities, rather than the ruptures, that characterize the lives of Cambodians before they escaped, during their flight, and after their resettlement. Literary scholar Cathy J. Schlund-Vials (2012) explores the cultural "memory work" being done by Cambodian American writers and performers, including a popular transnational hip hop artist, as they attempt to memorialize a tragic history of war, genocide, and the search for justice.

Many more detailed studies need to be done on such topics as the internecine political conflicts within the immigrant community, what progress Cambodian American youngsters are making in their schooling and

employment possibilities, intra-familial discords, changing gender relations, interracial dating and marriage between Cambodian Americans and individuals of other ethnic origins, how destitute families and households have managed to survive after welfare reform was enacted in 1996, and how the form(s) of Buddhism practiced in the United States may differ from what had existed in pre-Khmer Rouge Cambodia as well as in contemporary Cambodian society. Unfortunately, other headline-grabbing events around the world and in the United States seem to have relegated research on Cambodian Americans to the back burner in both academic and public consciousness.

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